

# All Appropriate Inquiry

In Virginia



# Bona Fide Prospective Purchaser

- BFPP – Brownfields Summary Form
- All Appropriate Inquiry with Phase I ESA in accordance with ASTM E-1527-05 is recommended
- Self implementing program as it is set up with the EPA
- In Virginia, to help facilitate redevelopment we will issue a BFPP status letter as a form of a comfort letter
- Phase II ESA may be needed for purchasers knowledge and helps to gauge what “appropriate care” may be needed
- DEQ staff review of submitted data along with agency records should help eliminate pitfalls for a buyer
- Also provide Lender Liability Letters and Contiguous Property Owner Letters
- Does NOT eliminate the need for “Appropriate Care”

# Liability Protection as New Owner

- The person acquiring the site is referred to as a bona fide prospective purchaser, or BFPP
  - Knowledge of real or perceived environmental issues
  - No affiliation between seller and buyer
  - Buyer performs environmental due diligence (AAI)
  - Buyer agrees to exercise appropriate care
    - Common sense steps to protect human health and the environment
- Due diligence & site profile form submitted to DEQ
- DEQ reviews submittal and file information
- Provided no exclusions, comfort letter is issued
- Average turnaround is 3 weeks
- Tracks federal legislation if AAI is performed

# AAI

- Developed to protect purchasers & facilitate redevelopment
- No requirement to complete AAI however if you don't, you bought the property, you bought the problem and the full liability – *Caveat emptor*
- Nobody would purchase a home without a termite inspection and the necessary mitigation or repairs, why would one buy a commercial property without the Phase I?
- This is not a “got you” program but rather a program to protect purchasers and to encourage cleanup
- There are steps which a purchaser/owner is required to follow and these should be taken seriously

# Easy Process...

## Practical, Predictable, & Timely

- Buyers and sellers self-determine eligibility using DEQ's Brownfields Manual
- Contact DEQ Brownfield Coordinator to discuss
  - has no regulatory authority
  - provides information and assistance
  - “safe” to talk to about projects
  - helps facilitate deals
- DEQ reviews available site information
- If eligible, DEQ issues comfort letters
  - Averaging 3 week turn around
- If necessary, site is enrolled at DEQ for cleanup
- Site is cleaned up and redeveloped

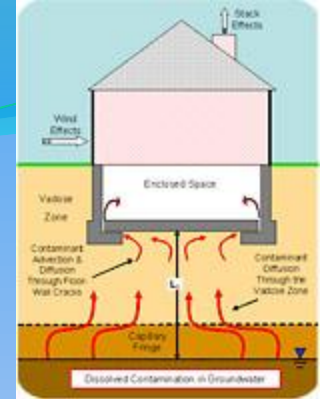
# Enforcement Bar

- Federal enforcement bar on sites actively cleaning up a brownfield site pursuant to a State cleanup program
- Virginia will follow a parallel strategy in that sites undergoing cleanup in our VRP will not lose eligibility or be subject to an enforcement action
- Completion of the Virginia's VRP provides enforcement immunity in the state and with the existing MOA with the EPA, an bar from any action at the federal level

# Appropriate Care

- What is appropriate care?
- “Appropriate Care” After acquisition the property owners must “take reasonable steps to stop a release, prevent a threatened release, and prevent exposure to a release or threatened release”
- Probably easier to tell what is it not...it is not appropriate care to put a playground on a contaminated site without undertaking the proper mitigation steps
- Enrolling the site into the VRP is clearly appropriate care

# Vapor Intrusion



- ASTM E 2600-10 *Standard Guide for Vapor Encroachment Screening on Property Involved in Real Estate Transactions*
- *Vapor intrusion* as “the migration of volatile chemicals from the subsurface into overlying buildings. Volatile chemicals may include volatile organic compounds, select semivolatile organic compounds, and some inorganic analytes, such as elemental mercury and hydrogen sulfide.” – ITRC
- *Vapor encroachment condition* (VEC) as the presence or likely presence of vapors from chemicals of concern (COC) in the subsurface of a property caused by the release of vapors on or near the property.
- VI has complicated AAI, appropriate care, and remediation
- Enrollment and completion of the VRP should address VI issues



# We're Just a Phone Call Away...

- Please feel free to contact to call me to discuss property status prior to closing on property
- Important whether it's a purchase or an involuntary acquisition
- If the locality is assisting an economic development project or private property acquisition, also feel free to contact DEQ to assist in understanding whether issues exist